



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

November 20, 2015

Memorandum for: Deputy Commissioner Trials

Re: **Police Officer Steven Hennessy**
Tax Registry No. 948526
Administrative Support Division
Disciplinary Case No. 2013-9365

The above named member of the service appeared before the Court on October 20 and November 13, 2014; and January 20, June 18-19, and July 14, 2015, charged with the following:

DISCIPLINARY CASE NO. 2013-9365

1. Said Police Officer Steven Hennessy, assigned to the 122nd Precinct, on or about and between November 11, 2012 and February 11, 2013, did engage in conduct prejudicial to the order, efficiency or discipline of the Department in that said Police Officer wrongfully did ingest an anabolic steroid without police necessity or authority to do so.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS**

2. Said Police Officer Steven Hennessy, assigned to the 122nd Precinct, on or about and between November 11, 2012 and February 11, 2013, did engage in conduct prejudicial to the order, efficiency or discipline of the Department in that said Police Officer wrongfully did possess an anabolic steroid without police necessity or authority to do so.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS**

In a Memorandum dated October 7, 2015, Assistant Deputy Commissioner David S. Weisel found Police Officer Steven Hennessy Guilty of all Specifications in Disciplinary Case No. 2013-9365. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

I have considered the totality of the circumstances and issues in the misconduct for which Police Officer Hennessy has been found Guilty of and deem that separation from the Department is warranted. However, instead of an outright dismissal from the Department, I will permit an alternative manner of separation from the Department for Police Officer Hennessy at this time.

It is therefore directed that an *immediate* post-trial negotiated agreement be implemented with Police Officer Hennessy in which he shall immediately file for vested-interest retirement, forfeit thirty (30) suspension days (previously served), waive all time and leave balances, including terminal leave, and waive all suspension days, with and without pay, if any, and be placed on one (1) year dismissal probation.

Such vested-interest retirement shall also include Police Officer Hennessy's written agreement to not initiate administrative applications or judicial proceedings against the New York City Police Department to seek reinstatement or return to the Department. If Police Officer Hennessy does not agree to the terms of this vested-interest retirement agreement as noted, this Office is to be notified without delay. This agreement is to be implemented **IMMEDIATELY**.


William J. Bratton
Police Commissioner



POLICE DEPARTMENT

October 7, 2015

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In the Matter of the Charges and Specifications : Case No.
- against - : 2013-9365
Police Officer Steven Hennessy :
Tax Registry No. 948526 :
Administrative Support Division :
-----X

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable David S. Weisel
Assistant Deputy Commissioner - Trials

APPEARANCE:

For the Department:

Penny Bluford-Garrett, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent:

Stuart London, Esq.
111 John Street
New York, New York 10038

To:

HONORABLE WILLIAM J. BRATTON
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

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P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT
GENERAL REGULATIONS

The Department was represented by Penny Bluford-Garrett, Esq., Department Advocate's Office. Respondent was represented by Stuart London, Esq., Worth, Longworth & London LLP.

Respondent pleaded Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

FACTS

Introduction

It was not disputed that Respondent tested positive for metabolites of nandrolone, also known as 19-nortestosterone, an anabolic steroid. In fact, the testing process itself was indisputably accurate: Respondent had these metabolites in his bloodstream. The controversy in this case is why. The Department asserted that Respondent possessed and ingested nandrolone. Respondent asserted that he possessed and ingested a dietary bodybuilding supplement that was

not and did not contain nandrolone, but did contain other substances, and that led to the positive result.

Almost all positive drug test cases in this forum are based on circumstantial evidence. No one has seen the accused take drugs; the metabolites are found in her bloodstream. In Respondent's case, the Department relied on a wider array of circumstantial evidence to disprove his defense that he took only dietary supplements.

Random Testing of Respondent for Drugs

On February 11, 2013, Respondent took a random drug test for the standard panel of substances banned by the Department. Oscar Bellesia, a registered nurse assigned to the Medical Division, collected the samples. He also managed Respondent's Medical Division questionnaire (DX 4; Tr. 149-54, 164, 166, 174). The questionnaire instructed the officer to list all "Medication," including "Aspirin, Vitamins, Etc." "Taken" within the past 72 hours, and all "Food," including "Vegetables, Breads, Meats, Cereals, Etc." "Ingested" within the past 24 hours. Respondent listed several Food items, but under "Medication" listed only [REDACTED], for which he had a prescription (see *Medical Analysis*, infra), [REDACTED]. Both Bellesia and Respondent signed the form (Tr. 156-57).

The testing for steroids was done through urine. Bellesia's practice was to escort the officer to the bathroom when he was ready to urinate and give him a sterile and disposable beaker. Using a mirror, Bellesia watched the stream of urine enter the beaker. Bellesia tested the urine's temperature to ensure the officer did not try to dilute it with urinal water or switch it with a batch of concealed urine. The officer then placed approximately 30 milliliters of urine into each of two vials, A and B, and was to seal the vials himself. Bellesia also placed the

custody and control form in an envelope, and placed it in a locked refrigerator, so it could be sent to Quest Diagnostics (Tr. 157-59, 161-67, 169, 171-72, 174-77; DX 2, p. 6 & DX 8, Quest's and Medical Division's signed copies of custody and control form, respectively).

Laboratory and Medical Analysis

Dr. Barry Sample was Quest's chief scientific official relevant to this case. He previously worked at the Indiana University School of Medicine, where he helped get the school's sports medicine laboratory accredited by the International Olympic Committee for testing on performance-enhancing drugs. Sample had consulted in the same regard with the Department of Health and Human Services, the United States Anti-Doping Agency (USADA), the National Football League, the National Basketball Association, and the International Tennis Federation. He was deemed an expert in the fields of forensic toxicology, anabolic steroids and performance-enhancing drugs (DX 9, Sample's curriculum vitae; Tr. 187-90, 192-93, 195-96).

Dr. Gary Green was a physician specializing in sports medicine. Among other positions, he was a consultant on performance-enhancing drugs for the USADA, Major League Baseball, the University of California, Los Angeles, and Pepperdine University. He was deemed an expert in the field of anabolic steroids (DX 1, Green's curriculum vitae; Tr. 9-12).

Dr. Joseph Ciuffo was a district surgeon assigned to the Medical Division. He was a certified medical review officer by the American Academy of Medical Review Officers. One of his responsibilities in this regard was to review cases of officers that tested positive for drugs, including to see whether the process functioned correctly and whether there were any legitimate alternate medical explanations for the result (Tr. 102-05, 124).

Sample, Green and Ciuffo testified about the science behind the case against Respondent. Anabolic steroids were testosterone and testosterone-related substances that affect the androgen

receptors in the body and thus the secondary sexual characteristics associated with maleness. Aside from these androgenic effects were the anabolic effects. The anabolic effects increased muscle mass and performance, which was why anabolic steroids were associated with bodybuilding (Tr. 15-18, 55-57, 65, 67, 73, 196-97).

Respondent's urine was tested at Quest Diagnostics by gas chromatograph mass spectrometer. The two metabolites of nandrolone that were found in Respondent's urine were 19-norandrosterone (19-NA) at approximately 27 nanograms per milliliter of urine, and 19-noretiocholanolone (19-NE) at approximately 7 ng/mL. Only the 19-NA, however, was used by the Department to determine a positive or negative test result. The cutoff or reporting limit for the 19-NA was 2 ng/ML. Anything less than that was reported as negative, and thus Respondent's samples were reported as positive (Tr. 19, 21, 24-27, 30, 62, 77, 197-98, 202-07, 209-12, 214-19; DX 2, Quest Diagnostics report for specimen A; DX 10, Quest report for specimen B; DX 3, results transmission from Quest to Department).

Nandrolone is available in the United States legally only by prescription and only in injection form (Tr. 25, 45, 85, 123-24, 197, 199, 208).

The two metabolites are found, however, not only from nandrolone, but in certain dietary supplements used to increase muscle mass as well. Precursors to nandrolone like 19-norandrostenedione, 19-norandrostenediol, and other 19-nor compounds might be found in supplements and could result in a positive test for nandrolone. These were banned, however, by the federal Anabolic Steroid Control Act (ASCA) of 2004, as well as the NYPD Personnel Bureau Memo 44 of 2011 (PBM 44). Because both nandrolone and other 19-nor compounds could lead to a positive test for the metabolites, it was possible for someone to use dietary supplements, or claim that they did, in order to mask the actual use of nandrolone (Tr. 24-26, 37, 45, 62, 64, 72, 198, 219-21, 226-28, 230-32, 235).

Sample pointed out that even in the ASCA era, supplement manufacturers often changed the molecular structure slightly to make the product technically legal (Tr. 227).

Green helped write PBM 44. The policy memo notes that dietary supplements are unreliable, often contaminated, and can lead to positive drug tests. Often the listed ingredients did not match what was actually contained, or contained ingredients that were not listed (Tr. 40-42, 44-45, 75, 84).

Ciuffo reviewed Respondent's CVS pharmacy prescription records (DX 6), the statement from his physician that he was prescribed [REDACTED], and his medical records (all incorporated as part of Ciuffo's report, DX 7). This was provided to Ciuffo by Respondent, whom Ciuffo also interviewed (Tr. 106-12, 127-28, 140).

With dietary supplements, there often was more 19-NA found than 19-NE, but if the substance was taken for more than a few days, the situation sometimes could reverse. The lookback period for these supplements was anywhere from a few hours to a week. The metabolite levels could rise and fall quickly, and there were many individual variations. There also were differences in the lookback period between oral and injectable nandrolone (Tr. 26-27, 61, 78-79, 81-82, 85-86, 207-09).

Green noted several suspicious factors concerning Respondent's claim that he had taken a dietary supplement labeled Pro-Anabolic Iso Stack from Advanced Muscle Labs. The word "anabolic" should have been a red flag that it was being marketed to steroid users. One of the items in the "stack," or group of supplements, was Decavol. Green testified that "deca" was known in the bodybuilding community as shorthand for Deca-Durabolin, a brand name for nandrolone. One of the ingredients in the Decavol was a 19-norandrostene product. Another of the supplements was Arom-X. Green indicated that this was an aromatase inhibitor. Steroid users, Green said, essentially created too much testosterone in the body, and the excess was

converted to estrogen. This led to secondary sexual characteristics associated with femaleness in male users. To combat this, male steroid users could take aromatase inhibitors to block the estrogen enzymatically. Finally, there was a warning label on the package that persons subject to testing for performance-enhancing drugs should consult their "sanctioning organization" first, as well as their physician, because it could show elevated testosterone levels (Tr. 32-33, 45-47, 71; DX 7, Medical Review Officer package).

The Pro-Anabolic Stack nevertheless potentially could have led to the positive test result. There was a 19-nor product in the Decavol, for example, but Sample indicated that he would need to test the product to know for certain (Tr. 65, 72, 83-84, 223-25).

Green noted that while the Pro-Anabolic Stack could have led to a positive result for nandrolone metabolites, Respondent did not indicate at his official Department interview (DX 5) when or how much he took of it in relation to the drug test. He did not state that he consulted with his physician before taking the supplement (Tr. 36, 45-46).

Green testified that Respondent said at his interview he was taking the stack due to pain in his shoulders and elbows from working out. Green pointed out, however, that the supplements should not have helped with pain even if they contained exactly what the label said. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Respondent did not write anything about dietary supplements on his Medical Division pre-test questionnaire (DX 4). He did, however, list testosterone, which is a natural anabolic

steroid but would not itself give a positive test for nandrolone. Respondent was taking the testosterone at very high doses as prescribed by a physician (Tr. 27-31, 56-57, 68).

In Green's view, however, there was no legitimate medical reason for that prescription. There was no proper examination, evaluation, testing, or diagnosis. A 27-year-old healthy male, like Respondent, should not need testosterone barring conditions like testicular dysfunction or tumors. For men under 40, the most common reason for testosterone was steroid use, as the use of steroids effectively decreased the amount of testosterone naturally occurring in the body. Respondent did not have low testosterone in his bloodstream prior to the medication. No test for free testosterone (i.e., the kind affecting sex traits) was done, and the tests were not performed early in the morning, when testosterone should be highest. A low level later in the day was meaningless (Tr. 52-54, 56, 66, 68, 91).

Green found the prescription of testosterone gel at the first doctor visit to be suspicious, as the doctor made no inspection of his testicles at that time. Only on the second visit was this done and Respondent was diagnosed [REDACTED]. While it was possible for a 27-year-old male to suffer from testicular dysfunction, it was highly unlikely to result from primary testicular failure, i.e. a problem with the testicles themselves, as opposed to myriad other reasons, like tumors or infection. The doctor should have addressed fertility as well (Tr. 88-90, 92). [REDACTED]

[REDACTED]

[REDACTED] (Tr. 91).

Respondent told Ciuffo that he bought the supplement at Eva's Supplements, a store akin to GNC that sold health food or supplements. Ciuffo, however, concluded that nothing other than nandrolone explained Respondent's positive results. The Pro-Anabolic Stack did not explain the result, as Ciuffo asked Respondent about his knowledge of PBM 44 and the warning

label. Respondent said that he did not read the label. His medical records did not explain the positive result and there was no sign that he discussed the supplement with his physician (Tr. 113, 115-20, 139-40). Ciuffo later conceded, however, that the supplement could explain the result but there was no way of knowing due to the variation in manufacturing and the prevalence of contamination in such products (Tr. 122, 138-39, 144-45).

Internal Affairs Investigation

Sergeant Matthew Sheehan investigated the matter for the Internal Affairs Bureau. Respondent had told the Medical Division that the positive test result could have resulted from his testosterone prescription from Zafaranloo. Sheehan agreed that there was nothing "banned or wrong or prohibited about" testosterone. Sheehan did not recall Respondent stating that he had first okayed the prescription with a district surgeon (Tr. 244-49, 269-70).

Respondent denied in his official Department interview that he took illegal steroids. He said that the positive result could have come from the dietary supplement, the packaging for which he also had provided to Medical. He said that he had taken the same supplement while serving in the Army, and never had tested positive for anabolic steroids. IAB went to Eva's, across the road from the 122 Precinct on Staten Island but with two other locations as well, to verify that the store sold the supplement so the ingredients could be reviewed. Respondent himself was a resident of Staten Island (Tr. 247, 250-51, 253-54, 259, 265, 268, 279, 441-42; RX 5, printout from evassupplements.com).

Sheehan agreed that because Respondent was in the Police Academy in 2010, he would not there have seen PBM 44, which was promulgated in 2011. Respondent told Sheehan he saw a different Personnel Bureau Memo at the Academy. Sheehan testified, however, that PBM 44, ¶18, noted the revocation of PBM 95 of 2009 (Tr. 266, 273).

Respondent's Medical Defense

Dr. John Zafaranloo of Staten Island was Respondent's personal physician. He was board-certified in the areas of internal and family medicine. One of his areas of research was a journal article reviewing cases of low-potassium paralysis in patients taking Ephedra for weight loss. He was deemed an expert in the field of internal medicine (Tr. 288-91).

Zafaranloo estimated that 75% of his approximately 10,000 patients, of both sexes, had some degree of testosterone deficiency. He raised this to 80% for only the male patients. "I see a lot of patients. They come in fatigued, lack of sexual drive, irritable, moody, depressed in young – younger patients and so I started inquiring and researching." He performed blood work and "it confirms it." He would generally start testosterone replacement with transdermal gel, but if that did not work, he would refer the patient to a specialist (Tr. 292-93, 332-34).

Zafaranloo began seeing Respondent in 2010. He presented with the symptoms described above and the doctor treated it as above. The gel, [REDACTED] did not work, however. But he did not refer Respondent to a specialist. Zafaranloo prescribed testosterone injections himself and referred Respondent to "[o]ur local testosterone guru expert," Dr. Barry Gordon. Zafaranloo enthusiastically agreed that he had referred many patients to Gordon. Gordon saw Respondent on March 18, 2014, and confirmed the testosterone deficiency (Tr. 293-96, 327-28, 349-52, 354-57, 367, 371-75).

On cross examination, however, Zafaranloo admitted that when Respondent came to him as a 27-year-old on February 23, 2011, he did not complain of lack of energy, sex drive or other sexual dysfunction, or sore muscles. On November 17, 2011, Respondent was in the office for a review of blood tests due to [REDACTED], i.e. [REDACTED] deficiency. Zafaranloo observed his [REDACTED] to have [REDACTED], though he testified they were only "[s]lightly smaller" than normal.

He conceded that [REDACTED] was a sign of steroid abuse in a 27-year-old male, but maintained he did not suspect this with Respondent. In fact, "[i]t never occurred to me" that Respondent might have been abusing steroids. Nor did it particularly matter to Zafaranloo what was the cause of the [REDACTED], as he merely needed to treat it. Gordon did not suspect steroid abuse either (Tr. 304-05, 307, 311-14, 322-23, 357, 395; DX 7, Medical Records, p. 35GG).

Zafaranloo testified that he hated dietary supplements. They were unapproved by the Food and Drug Administration and grossly mislabeled. He had many patients come in after taking supplements for weightlifting that then had complete shutdown of their testosterone. Zafaranloo instructed his patients to consult with him before beginning any supplements. The Pro-Anabolic Stack could have caused the positive test result here (Tr. 296-97, 302).

Zafaranloo denied that he prescribed the [REDACTED] to Respondent for recreational use. It was to "uplift his mood, uplift his spirits, improve his sexual drive, increase his energy, increase his well-being." The amount, 200 milligrams a week, was average and not at a level needed for bodybuilding. Zafaranloo never performed a blood test for free testosterone and disagreed with Green that testosterone levels needed to be checked in the morning. Gordon agreed on this latter point, however (Tr. 297-98, 320-22, 356, 367-68).

Zafaranloo agreed that referrals should appear in Respondent's medical records but conceded that no such referral appeared for Gordon. He also conceded that there was no note about prescribing [REDACTED]. He claimed that he and Respondent must have spoken about it over the phone when his blood tests came back. He admitted, however, that Respondent might not have complained about any symptoms at an office visit before that phone call. Zafaranloo did not receive any records from Gordon, but that would not necessarily have occurred unless Gordon treated Respondent, as opposed to merely consulting with him (Tr. 323-29, 378).

Dr. Barry Gordon's medical background was in hematology but his current focus was testosterone. He did not belong to any national or state medical societies, but that was for "mostly political" reasons having nothing to do with steroids. One of his books was called *Testosterone Deficiency: The Hidden Disease*. Gordon pointed out several studies in which patients in their 20s were treated for testosterone deficiency. He had treated nearly 4,000 patients for testosterone deficiency and his office saw between 530 and 550 per week. Gordon was deemed an expert in the area of internal medicine. In his view, symptoms like fatigue, lack of libido and weight gain were the result of testosterone deficiency. Treating them with getting more sleep or exercise would not solve the problem as you would still have low testosterone (Tr. 341-43, 345-46, 364-65, 377-78, 394-95).

Gordon disagreed with Green that Zafaranloo should have checked Respondent for, for example, testicular cancer upon diagnosing him with [REDACTED], as Respondent had no other related symptoms. Someone with that kind of tumor would feel it himself or the examining physician would palpate it (Tr. 358, 389-91).

Gordon told all his patients not to take dietary supplements because they blocked the effects of the prescribed testosterone. Yet he only "guess[ed]" that taking nandrolone could "possibly" cause low testosterone levels. He claimed that nandrolone only increased red blood cell production in the treatment of anemia and did not build muscle mass. It was developed to mimic testosterone's known effect of doing the same thing but do as little else as possible. He admitted that he knew of no one that took nandrolone and also did not take testosterone, but said it was a "scam" that no one needed to engage in. He indicated that it would lead to an excess of testosterone, with the result basically being the same effects as hypogonadism but with larger muscles (Tr. 306, 323, 368-69, 380-81, 386-87, 392-94).

Respondent's Testimony

Respondent is 31 years old and has been a police officer for about five years. He testified that he attended high school on Staten Island and played football and baseball there. [REDACTED]

[REDACTED] It made him conscious of the need to stay healthy and in shape. His football coach encouraged weight gain, for which he took creatine (Tr. 402-04, 478).

Respondent graduated from high school in 2001. In 2005, Respondent was 20 years old and working for a downtown financial firm. When the terrorist attacks in London happened that summer, he decided that he had had enough of the desk job and joined the Army that day. He began to feel sore from the physical fitness regimen, but found that GNC stores were located within the post exchanges where he was stationed. He began taking the Pro-Anabolic Stack from Advanced Muscle Science. He always tested negative for drugs in the Army. He thought that if the Stack was being sold on base, especially after ephedrine had been pulled from the shelves after problems with that product, it was safe. He was aware that after the passage of ASCA in 2004, "it was pretty commonly known that they weren't allowed to put anything into these products anymore. A lot of products changed their format" (Tr. 404-10, 437, 449, 477-81).

Respondent was part of the Army Partnership for Youth Success, a program that connected employers with soldiers to facilitate post-military employment. This helped him enroll in the NYPD after his honorable discharge from the Army in the fall of 2008. He was drug-tested by the Department at that time. He admitted that on the day his Academy class filled out their various paperwork, everyone was handed a clipboard with various memoranda and Interim Orders that had not been made part of the Patrol Guide. He asserted, however, that he did not really read them (Tr. 411-15, 440, 477-78).

Respondent graduated from the Police Academy in July 2010. Once he began working as a police officer, he still worked out on a regular and frequent basis. He started feeling fatigued

after work. Although he worked a full tour from 1200 to 2000 hours, for example, he did not think that he should have been fatigued from this. "And my girlfriend at the time had kind of hinted to me that I should go see a doctor." A neighbor, who worked for the Department of Sanitation and had the same health coverage, recommended Zafaranloo. The doctor thought Respondent had testosterone deficiency and a blood test confirmed it (Tr. 403, 415-17, 424-25).

Respondent testified that he spoke to his district surgeon, Dr. Brian Mignola, before taking any testosterone. Mignola told him that he had many officers on testosterone, and as long as the symptoms and bloodwork supported the diagnosis, and the testosterone was prescribed by a physician, it was fine (Tr. 418-19, 459-60).

Zafaranloo first prescribed [REDACTED] gel, but Respondent found it to have unpleasant side effects and it did not seem to help with his fatigue. Zafaranloo next prescribed [REDACTED] injections. This turned Respondent's condition around and he felt completely better. At one point, his regular pharmacy, CVS, ran out of it and he had to get it from an independent pharmacy, Delco Drugs, also on Staten Island (Tr. 417-20, 453-54, 469-71; RX H, Delco records).

At the same time, in 2011 or 2012, Respondent also was taking the Pro-Anabolic Stack. He had been transferred to the 122 Precinct and bought the stack at Eva's across the street in late 2012 approximately. He also had bought it at GNC. He had begun working out again, but after Hurricane Sandy's devastating impact on Staten Island in particular, he began working extended tours and was unable to work out as much. When he resumed, he had joint pain in his elbows and shoulders. He wanted to train better and recover more quickly, and an Eva's employee suggested, among other things, the Pro-Anabolic Stack. Respondent did not have any qualms about its legality because he had taken it in the Army throughout the end of his initial probation period in the Department with no repercussions. He did not feel it necessary to seek a

prescription from Zafaranloo for soreness, and in fact was taking no pain medication even for a herniated disc he had suffered around the time of trial after a car accident (Tr. 420-29, 441, 445, 449, 456-58, 461-62, 481, 483-84).

Respondent testified that the Pro-Anabolic Stack always contained the same three products whenever he bought it, whether at the GNCs within the Army post exchanges or at Eva's. This included the pills for Decavol and Arom-X. He testified upon examination by the tribunal that all he knew about these products was that they were supposed to aid in recovery and build mass. But he said on re-cross examination that he did not know Decavol was in the Stack. He contended that there were three clear bottles with black caps and no labels. He asserted that when he most recently bought the Stack, he took out the bottles and threw the box in the bottom of his locker. He never read the ingredients (Tr. 482-86).

When Respondent filled out the questionnaire for his drug test in February 2013, he only listed his prescription medications and not supplements, because he was concerned about the former interfering with the test. [REDACTED]

[REDACTED] (see DX 7, pharmacy records; Tr. 31, 430, 455, 468).

When Respondent was notified that he tested positive for the metabolite of nandrolone, he called Zafaranloo. The doctor assured Respondent that nothing he prescribed could have caused the positive result, but any supplements he was taking might have. He testified that he had spoken with Zafaranloo about other supplements but never the Pro-Anabolic Stack. Respondent googled the 19-nor ingredient on the Pro-Anabolic Stack and "it comes right back to nandrolone." Respondent asserted that he did not know nandrolone was on PBM 44, and he never intended to take it or any other anabolic steroid (Tr. 433-34, 449).

Respondent testified that he walked into Eva's a few days later and asked the staff about it. They told him that after 2004, nothing was in the Pro-Anabolic Stack that should have made him test positive. This was "the same line that all of the companies kind of give me, now that I am realizing." In fact, he went to a GNC store as well, where the clerk told him that they no longer sold the Stack due to rules of the World Anti-Doping Agency, an initiative of the IOC. He also wrote to GNC corporate about the matter, but they told him that they could not provide information about non-GNC-branded products (he made a general request for information, not specifically if, when, and where the Stack was sold) (Tr. 436-37, 445-46, 448-49; RX G, emails with GNC).

FINDINGS AND ANALYSIS

Respondent is charged with possessing and ingesting an anabolic steroid. The Department alleged that this anabolic steroid was nandrolone. Respondent conceded that he tested positive for nandrolone metabolites. He contended, however, that the positive result arose from his possession and ingestion not of nandrolone itself but of a bodybuilding supplement, the Pro-Anabolic Iso Stack, which contained chemical precursors, or prohormones, to nandrolone but not nandrolone itself.

The several expert witnesses for the Department defined anabolic steroids as testosterone and testosterone-related substances that affect the secondary sexual characteristics associated with maleness, and also provide the anabolic effects of increasing muscle mass and performance. This is why they are prized by some bodybuilders.

There also is a legal definition of anabolic steroids set forth in Personnel Bureau Memo 44 of 2011, the controlling policy of the Department on the matter. The memo defines them as controlled substances listed in Schedule II of the Public Health Law (Public Health Law § 3306).

Public Health Law § 3306 (h) defines anabolic steroids as any drug or “hormonal substance” that is chemically and pharmacologically related to testosterone. Several androstenediones and androstenediols are listed. See Public Health Law § 3306 (h)(4)-(10).

This is key because Drs. Green and Sample testified for the Department that nandrolone was not the only substance that could cause the presence of the 19-norandrosterone and 19-noretiocholanolone metabolites of nandrolone. Certain so-called “dietary supplements” were used by bodybuilders to increase muscle mass. These sometimes contained prohormones, or precursors to nandrolone, like 19-norandrostenedione, 19-norandrostenediol, and other 19-nor compounds.

Dr. Green noted that the precursors that caused positive nandrolone tests also were banned by PBM 44. It is a fair conclusion that if the Pro-Anabolic Stack caused Respondent's positive result, it contained one or more of these 19-nor precursors. These precursors are, by statute and Department policy, anabolic steroids. In other words, whether Respondent took nandrolone, or the Pro-Anabolic Stack, or both, he still possessed and ingested an anabolic steroid. He thus is found Guilty of both specifications.

The other major consideration for this case is penalty. Respondent basically conceded that he was guilty but claimed that because his possession and ingestion was fundamentally innocent, he should be spared the penalty of termination from the Department for using anabolic steroids unlawfully.

The Court rejects Respondent's claims of innocent possession and ingestion of the Pro-Anabolic Stack, even if that was all he took. He was no neophyte in the area of bodybuilding supplements and steroids. He had been taking creatine, a non-steroidal protein supplement, since high school, when he first became interested in bodybuilding. Once he joined the Army, he began taking the Pro-Anabolic Stack for the same purpose. He was aware that a statute, the

Anabolic Steroid Control Act, was passed specifically in 2004, and that the statute banned certain substances from circulation. He thus was aware that certain dietary supplements could contain problematic ingredients. He claimed, however, that because products were being taken off the shelves after 2004, but the Pro-Anabolic Stack remained for sale, it was safe. In the Court's view, however, the knowledge that steroids could be contained in supplements should have led him to check ingredient lists even more scrupulously.

The need to check ingredients was reinforced by Personnel Bureau Memo 44 of 2011. Although Respondent contended that he was unaware of this memo due to its issuance after he graduated from the Police Academy, police officers are charged with knowledge of the Patrol Guide and associated documents. Ignorance is no more an excuse here than in any other part of the law. *See Case No. 80944/05*, pp. 3-4 (Apr. 3, 2006).

PBM 44, ¶¶ 11, 13-14, gives several warnings about dietary supplements. It notes that over-the-counter products marketed as dietary supplements for the bodybuilding community may contain steroids or steroid-like substances. Code words and phrases like "anabolic" and "reduces estrogen" were used on the supplements to attract buyers. These supplements could result in positive drug tests.

PBM 44 lists several potentially contaminated supplements in Appendix A, but notes that other products with code words or phrases also should be avoided. Decavol and Arom-X, both listed as manufactured by Advanced Muscle Science, are listed in the Appendix. These both were contained in the Pro-Anabolic Stack made by AMS. The Appendix also noted that manufacturers were known to change labels to evade the FDA, so the labels themselves were not reliable.

It therefore is not credible that Respondent had no idea that something called the Pro-Anabolic Stack could contain anabolic steroids, or at least that it could cause a positive drug test.

A sophisticated, longtime user of bodybuilding products like Respondent also should have realized that Decavol and Arom-X were code words indicating Deca-Durabolin, the trade name for nandrolone, and an aromatase inhibitor, a product that reduces the conversion of excess testosterone to estrogen. Respondent's claim, essentially, that he did not really know what these products were was totally unconvincing. Finally, the package itself warned that it might cause a positive steroids test. Cf. Case No. 83969/08, pp. 120-21 (Feb. 18, 2011) (officer's Internet research should have revealed medical and legal concerns about testosterone and human growth hormone; he "[c]learly . . . turned a blind eye to the many indications that something was not right. . . . To the extent that he did not know . . . it was the result of a very determined and purposeful ignorance.").

The Court rejects Respondent's assertion that "anabolic" did not "automatically mean illegal steroid" (Tr. 369-70). That is certainly true in isolation, as the testosterone in everyone's body is an anabolic steroid and even nandrolone is available as a prescription medication for anemia. But as PBM 44 points out, "anabolic" is a code word in the context of bodybuilding supplements signifying that a purportedly legal product actually contains substances mimicking something like nandrolone.

Respondent's use of testosterone also was an issue at trial. He was not charged with using this unlawfully as an anabolic steroid. Rather, the Department pointed to Respondent's allegedly inappropriate use of it as evidence that he also was abusing nandrolone, or at the very least, that he was wrongfully taking the Pro-Anabolic Stack knowing it acted like nandrolone.

Dr. Green credibly testified that there was no legitimate medical reason for Respondent's testosterone prescription. He did not receive a proper examination or evaluation. As a healthy male in his 20s, Respondent should not have needed testosterone. In fact, for a man under 40, testosterone use was most commonly associated with steroid use, as the steroids led the body to

create more testosterone, which then was converted to estrogen to manage the excess. In other words, steroids effectively decreased the amount of testosterone naturally occurring in the body.

Respondent's experts, Drs. Zafaranloo and Gordon, found Respondent to be testosterone deficient. But there were several problems with their testimony. The most basic of these was their apparent contention that testosterone deficiency is the diagnosis, in anywhere from 75 to 80 percent to 100 percent of their respective practices, whenever anyone presents with any number of non-specific symptoms, like weight gain, fatigue, lack of sex drive, and depression. These are common problems that most if not all people experience as they grow "older," i.e., past their teens and early 20s. It is shocking to the tribunal that Zafaranloo and Gordon's approach to these issues is to medicate with anabolic steroids.

The testimony of Respondent's witnesses demonstrated that their only approach was testosterone, regardless of their protestations that they looked at "the whole patient." For example, on January 22, 2013, Respondent's testosterone level as measured by Zafaranloo was 437, but this was within the normal range of 240 to 900. Zafaranloo claimed, however, that normal "for him" could have been 900 and thus one had to look at the patient and his symptoms (Tr. 317-20). This begs the question of how one can ever conclude that a patient has a normal testosterone level? Everyone with low energy, sex drive, weight gain, etc., is going to get testosterone because "their numbers are too low."

Further confirmation of Gordon's approach to use testosterone as the answer for all of life's ills and a "cure" for aging was the matter of Respondent's supposed [REDACTED]. Green asserted that Zafaranloo made this diagnosis after inspection of Respondent, yet did no follow-up to check for testicular cancer, for example. To Green, [REDACTED] in such a relatively young person could have indicated this. Gordon scoffed at this, saying that a male patient would know if he had a testicular tumor.

This ignores, however, the fact that self-tests for testicular cancer are widely recommended for men Respondent's age, the very age at which this cancer is prevalent. The tests require careful manipulation of the testicles with the fingers to detect small, hard masses. This indicates that not all testicular tumors are so readily apparent to every man.

More importantly, it confirms the disturbing fact that both Zafaranloo and Gordon ignored other possible causes of Respondent's "symptoms" and went straight to a prescription of [REDACTED] e. Most striking of all is the fact that Zafaranloo ignored the possibility that Respondent's [REDACTED] were the result of steroid abuse. Zafaranloo, incredibly, waved this off by asserting that it never occurred to him.

Gordon made much of certain studies of hypogonadism in which men in a wide range of ages, including their 20s, were studied. That proved to Gordon that hypogonadism existed in men Respondent's age. In fact, this exchange proved little more than Gordon's dubious concept of scientific inquiry. In any event, it was not questioned that hypogonadism could affect young men. The problem was that Zafaranloo and Gordon made that dangerous diagnosis without considering other more reasonable possibilities.

In the end, Gordon's own testimony demonstrated the façade of Respondent's supposed "testosterone replacement therapy." Gordon admitted that he knew of no one that took nandrolone and also did not take testosterone. Why a legitimate medical professional promoting the therapeutic use of testosterone would know people like this, much less so many people to make a categorical judgment, is a telling question. In any event, Gordon noted that this was pointless: all it would do is lead to hypogonadism with larger muscles because the excess testosterone and related substances were being converted to estrogen. In other words, the well-known signs of steroid abuse like shrunken testicles and gynecomastia.

What Gordon did not say is that these users were taking testosterone in the first place in a vain attempt to replace what was already converted to estrogen. Taking testosterone “therapeutically” had the same effect. Zafaranloo conceded that his patients needed to keep taking testosterone because otherwise their “symptoms” would return. The testosterone injections thus really were no different than taking nandrolone or dietary supplements containing substances that produced nandrolone metabolites.

Respondent himself should have been skeptical of Zafaranloo and Gordon’s advice. PBM 44, ¶4, notes that there are unscrupulous doctors who give prescriptions for anabolic steroids in the absence of legitimate medical indications. Any reasonably objective adult should have been skeptical of the claim that such vague and broad symptoms as fatigue, depression, weight gain and lack of sex drive were symptoms of a unified disease that could only be cured by frequent lifetime injections of an expensive controlled substance.

In sum, Respondent’s use of testosterone was inconsistent with legitimate medical use. Instead, it was consistent with steroid abuse, as he would need the testosterone to keep replacing what was being lost to estrogen conversion as the result of his use of nandrolone or the Pro-Anabolic Stack.

Ultimately, Respondent failed to convince the tribunal that he should be treated differently than other steroid users whose cases resulted in a recommendation of dismissal from the Department. While the Department may only have been able to prove that Respondent used the Pro-Anabolic Stack, the evidence demonstrated that he was using it as a less-than-legal substitute for “real” anabolic steroids but not as blatantly illegal as nandrolone. As someone experienced in the world of bodybuilding and dietary supplements, he knew exactly what the Stack would do.

In *Case No. 2011-4578* (Sept. 4, 2012), the accused officer's friend and gym trainer injected him with what he told the officer was "deca." The officer supposedly did not know or attempt to find out what deca was: Deca-Durabolin, the brand name for nandrolone. The trial commissioner found the officer guilty but recommended 60 suspension days and one year dismissal probation as a penalty. The trial commissioner rejected the Advocate's view that steroid use should be treated in accordance with the general policy of termination for illegal controlled substances like marijuana, cocaine or heroin. Unlike these, some steroids, even nandrolone, can be obtained lawfully from a pharmacy via a physician's prescription. There were numerous disciplinary decisions where a member either had pleaded guilty or been found guilty of ingesting steroids outside the normal course of standard medical care, but termination was not imposed (see -4578, pp. 26-28).

The Police Commissioner disagreed with the trial commissioner, however. The Commissioner wrote that the officer's "violation of Department policy was egregious and warrants separation from the Department." He ordered that the officer immediately be offered an agreement to file for vested-interest retirement (see -4578, Police Comm'r's Mem., p. 2). See also *Case No. 2013-9945* (Feb. 5, 2015) (vested-interest retirement offered in accord with -4578).

This prior case is instructive because that officer claimed to hold similar beliefs about the "treatment" he was receiving as did Respondent in the current case. The prior officer essentially claimed that he did not know the substance his trainer injected him with contained steroids. Respondent claimed that he did not know the Pro-Anabolic Stack contained steroids. Both cases should be treated similarly for penalty purposes. Both officers should have known that there were many substances in the bodybuilding world that contained anabolic steroids and would cause a positive test. If anything, any reasonably objective person, much less someone like

Respondent who had a knowledge of the subject, should have known that a supplement called "Pro-Anabolic" might be problematic. It is an even more obvious code word than "deca."

The Police Commissioner, but not this tribunal, can offer a vested-interest retirement agreement in lieu of dismissal from employment, see Administrative Code § 14-115 (a). Therefore, the Court recommends that Respondent be **DISMISSED** from employment with the Department. See Case No. 2013-10631 (July 18, 2014) (11-year police officer with no disciplinary record negotiated penalty of vested-interest retirement, 30 pre-trial suspension days and one-year dismissal probation for possessing and ingesting one or more anabolic steroids).

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on January 11, 2010. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner – Trials



POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER STEVEN HENNESSY
TAX REGISTRY NO. 948526
DISCIPLINARY CASE NO. 2013-9365

Respondent's last three annual performance evaluations on record are as follows: he received a rating of 4.5 "Extremely Competent/Highly Competent" in 2012, a 3.0 "Competent" in 2011, and a 3.0 "Competent" for his probation evaluation in 2011. [REDACTED],
[REDACTED]

Respondent has no prior disciplinary history but currently is on modified duty status in regard to these charges. He has received two medals for Excellent Police Duty and one medal for Meritorious Police Duty.

For your consideration.



David S. Weisel
Assistant Deputy Commissioner – Trials